Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c) in the Omaha Metropolitan Statistical Area	))))	WC Docket No. 04-223

REPLY COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (USTA)[1] submits its reply comments through the undersigned in response to the Federal Communications Commission's (FCC's or Commission's) Public Notice (Notice),[2] seeking comment on Qwest's Petition for Forbearance in the Omaha Metropolitan Statistical Area (Petition).[3]

INTRODUCTION AND SUMMARY

Qwest Corporation (Qwest) seeks forbearance from certain regulatory obligations under sections 251(c), 251(h), and 271 of the Telecommunications Act of 1996 (1996 Act) in the Omaha, Nebraska Metropolitan Statistical Area (MSA) on the basis that there is intense competition from facilities-based wireline carriers and from intermodal competitors and that it is

[1] USTA is the nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data, and video services over wireline and wireless networks.

[2] *See* Public Notice, Pleading Cycle Established for Comments on Qwest's Petition for Forbearance in the Omaha Metropolitan Statistical Area, WC Docket No. 04-223, DA 04-1869 (June 25, 2004). The Commission extended the deadline for comments and reply comments to August 24, 2004 and September 23, 2004 respectively. *See* Public Notice, Wireline Competition Bureau Extends Comment Cycle on Qwest's Petition for Forbearance in the Omaha Metropolitan Statistical Area, WC Docket No. 04-223, DA 04-2440 (July 30, 2004).

[3] *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c) in the Omaha Metropolitan Statistical Area*, Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c) (filed June 21, 2004) (Petition).

no longer the dominant carrier in the Omaha MSA.[4] USTA urges the Commission to grant Qwest's petition because forbearance from these requirements is appropriate when there are facilities-based providers competing directly with an ILEC.

Telephone service provided by ILECS today is just one segment of a diverse and intensely competitive communications marketplace. It is a new world in communications, one defined by vigorous and growing competition among numerous companies investing in many different technologies to deliver new services and choices to consumers. Increased competition, for the most part, has replaced the need to regulate retail and wholesale rates in U.S. telecommunications service markets, including local exchange markets. Elimination of outdated regulations, particularly economic regulations, will promote innovative, improved, and less expensive telecommunications services.

DISCUSSION

I. The Telecommunications Landscape Has Changed.

The landscape for communications services has changed dramatically since the inception of the 1996 Act. Communications companies can no longer be labeled as just cable service providers, information service providers, wireless carriers, or wireline carriers. Technology and the marketplace have brought about full-service, competitive communications companies, which offer diverse services over a variety of platforms. One of the newest forms of communications that is gaining a stronghold in the market is voice over Internet protocol (VoIP), where consumers can obtain voice service using the technology of the VoIP provider and any broadband connection, whether provided by a cable company, an ILEC, a CLEC, or any other broadband provider. We may not know what new technologies and services will be available in

[4] *See* Petition at 3.

the future, but we do know that the future of communications services is ever evolving and rapidly changing and that, as VoIP has proved, the future comes quickly.

The communications landscape today consists of multiple networks, multiple providers, multiple services, digital technology, and broadband capacity, all of which are undifferentiated at a business, operating, and service level by old labels such as ILEC, CLEC, IXC, CMRS, CATV, ESP, and ISP. More succinctly, changes in technology and the marketplace have eliminated the monopolies formerly held by ILECs. Yet, commenters in this proceeding cling to such old labels, ignoring the presence of intermodal competition, urging the Commission to retain dominant carrier regulations, and attempting to force ILECs to provide their facilities below cost even when access to such facilities is clearly not necessary to compete. Their arguments that ILECs have a monopoly, a bottleneck, or control over the necessary facilities when there are facilities-based service providers that are offering telephone or equivalent services in the same geographic market as the ILECs are simply not credible. Rather, these commenters simply seek a competitive advantage by imposing the costs of regulation on ILECs while they operate without such hindrances and can use the disparity to strengthen their position in the marketplace while ILECs continue to lose customers to these competitors.

It is time for the Commission to heed the demands of the competitive marketplace by eliminating archaic regulations, especially dominant carrier economic regulations, that are still imposed on ILECs and by allowing the market to operate freely.[5] Certainly the Commission

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[5] While USTA advocates freedom from unnecessary economic regulation, USTA continues to advocate, as it has in numerous other proceedings, that the Commission must preserve certain social priorities, by imposing the same regulatory obligations on all providers of communications services. Notably, the Commission must ensure that all providers of communications services make universal service contributions, that law enforcement has access to telecommunications networks, that all Americans have access to E911, that disabled citizens have the opportunity to

should take such steps in markets, such as Omaha, where Qwest must compete toe-to-toe against a deregulated cable operator that is providing telephone service in that area. In this regard, quibbles over market share are beside the point: it is undeniable that competition between Qwest, Cox and others is fierce and that the sections 251(c), 271, and dominant carrier regulation[6] of Qwest's interstate services is no longer appropriate. Similar scenarios are unfolding throughout the country, as many USTA members face the same sort of competition that Qwest faces in the Omaha MSA. They too should be freed from unnecessary regulations.

II. The Viability Of ILECs In A Competitive Marketplace Necessitates Regulatory Parity.

The Commission must adapt its regulations to reflect the changed market conditions in which carriers operate today. As noted previously, facilities-based competitors (cable, wireless, and wireline) are not subject to the same regulations. In addition, there is also disparity between ILECs and their competitors that offer communications services through applications that consumers access and apply over any broadband connection (e.g., VoIP). This lack of regulatory parity disadvantages ILECs because they are competing with other carriers that operate in a market economy. Unlike ILECs, these competitors are not hamstrung by excessive economic and other regulations that are disproportionate relative to the regulatory requirements imposed on ILECs. Rather, the viability of these competitors depends on good business plans, aggressive marketing, reliable services, and competitive pricing. ILECs must have and do all the same things, yet they must have and do them within the confines, and subject to the additional costs, of

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use communications networks, that consumers are protected against slamming and improper use of their proprietary network information, and that access charges are applied even handedly.

[6] Forbearance from dominant carrier regulation should include sections 214, 61.38, 61.41-61.49, and 65, as Qwest cited in its Petition. *See* Petition at 32.

regulatory requirements that do not apply to their competitors. In areas served by competitors, where one carrier is regulated and the others are not, the Commission should create parity, not by increasing regulations on competitors but by eliminating those regulations on ILECs, which marketplace competition has rendered unnecessary. Accordingly, USTA urges the Commission to grant requests for forbearance from regulations that are no longer applicable in a competitive marketplace.

CONCLUSION

Consumers today have choices in their communications services because the communications marketplace offers innovative and competitive services. Accordingly, it is time for the Commission to eliminate unfair and outdated regulations that have no business governing the future of technology and innovation and their promise to consumers and to our economy. The public interest demands elimination of such regulations and the goals of the 1996 Act dictate such elimination. For the foregoing reasons, USTA urges the Commission to grant Qwest's request for forbearance from regulation as an ILEC under sections 251(c), 251(h), and 271 in the Omaha MSA.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on September 23, 2004, the aforementioned Reply Comments of The United States Telecom Association were electronically filed with the Commission through its Electronic Comment Filing System and were electronically mailed to the following:

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